

Matt H. Cline

From: Chris J. Tardio
Sent: Friday, September 12, 2014 4:56 PM
To: Ben Gastel; Roberto Bracerias (rbraceras@goodwinproctor.com); Jay Blumberg (jjblumberg@blumberglawoffices.com); Hemani, Abigail (ahemani@goodwinprocter.com); phermes@hermesnetburn.com; yvonne.puig@nortonrosefulbright.com; 'efraley@fraley-law.com'; Matt H. Cline; Hoffman, Eric (eric.hoffman@nortonrosefulbright.com); mgreer@adjtlaw.com; 'jlovely@cashmanlovely.com'; matthew.moriarty@tuckerellis.com; 'mrgottfried@duanemorris.com'; 'hbnecc@harrisbeach.com'; 'rgaynor@sloanewalsh.com'; 'jryan@sloanewalsh.com'; 'jmcDonald@sloanewalsh.com'; 'jklarfeld@ulmer.com'
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Subject: RE: September 17 Oral Argument

Ben:

I still object to motions/matters relating to the Tennessee Clinic Defendants being heard on the 17th, or that request even being made by the PSC. As I said below, I will not be present. The docket entry is clear at Dkt. 1320 that the hearing on the 17th is in front of Judge Zobel, not Judge Boal:

1320	<i>Filed:</i>	08/07/2014	Status Conference
	<i>Entered:</i>	08/08/2014	
<i>Docket Text:</i> ELECTRONIC Clerk's Notes for proceedings held before Judge Rya W. Zobel: Status Conference held on 8/7/2014, motion Hearing set for 9/17/2014 02:00 PM in Courtroom 12 before Judge Rya W. Zobel. , Status Conference set for 9/18/2014 03:00 PM in Courtroom 12 before Judge Rya W. Zobel.). (Court Reporter: Catherine Handel at 617-261-0555.)(Attorneys present: various) (Urso, Lisa)			

I remember nothing from the status conference and see nothing in the docket entries to suggest Judge Boal will hear argument on discovery issues on the 17th.

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From: Ben Gastel [mailto:beng@branstetterlaw.com]
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Thank you for the feedback. A couple of clarifications seem to be in order.

First, the PSC provided the motion as a courtesy to obtain feedback on whether we had an understanding of what motions would be heard on the 17th. We thought there was agreement at the last status conference as to what would be heard, and we saw this merely as a formality.

Second, having heard the below comments, obviously there is considerable disagreement as to whether Judge Boal is hearing the matters previously referred to her at the hearing on the 17th. We tried to clarify in the proposed motion that this was an open question, and I have tried to reach out on multiple occasions to both Judge Zobel and Judge Boal's clerk to obtain clarification. Obviously, I have not heard back but will provide an update as soon as I have one.

In the meantime, and in light of the below comments, we will revise the motion to simply note that it is unclear whether Judge Boal will be hearing motions that day and invite feedback from the Court on that issue. To the extent Judge Boal is hearing arguments that day, you now have the list of the motions that the PSC believes are up for discussion.

Further, having not heard any objections on the dispositive motions to be heard by Judge Zobel identified in the previous circulated motions (which relate to Dallas Back Pain and Dr. Bhigat), the PSC will plan on filing the same language as previously circulated.

An updated proposed motion is attached.

We appreciate everyone providing quick feedback on a Friday afternoon and apologize for the confusion.

Thank You,

Ben

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Subject: RE: September 17 Oral Argument

I object to any motions relating to the Tennessee Clinic Defendants being heard on the 17th or 18th.

First, lead counsel for the St. Thomas Entities specifically told the PSC earlier today that they were not available.

Second, this list – in the form of an unfiled motion – was, per the last status conference, supposed to come days ago. Sending a list of motions late on Friday two business days before a hearing completely eliminates the opportunity to meet and confer on what motions could/should be heard and does not allow for any meaningful response to this “motion.”

Third, I will not attend in person on the 17th, as no motions related to the Tennessee Clinic Defendants are ripe for hearing with Judge Zobel. Judge Boal has already conducted a hearing on the Tennessee discovery issues [see Dkt. 1275]. And, Judge Zobel, who will conduct the hearing on the 17th, has expressly referred the Tennessee Clinic Defendants-related motions listed in this draft motion (e.g., 598, 1041) to Judge Boal [Dkt. 1332]. Judge Boal has not set a hearing on any discovery issues on the 17th. It is highly prejudicial to my client to try to add them to Judge Zobel's docket with other states' dispositive motions on a day I will not be present, particularly with just with a couple days' notice.

My understanding – confirmed by the docket entries – is that the hearing on the 17th is for dispositive motions in front of Judge Zobel, not discovery issues related to my clients. I will not be there in person on the 17th and object to (re-)presentation of matters already argued in front of Judge Boal or to presentation of newly-referred matters on the 17th.

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From: Ben Gastel [<mailto:beng@branstetterlaw.com>]
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Subject: September 17 Oral Argument

Counsel,

Attached please find the PSC's motion regarding the oral argument set for September 17 in the NECC MDL. We plan to file this later today.

Thank you,

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